

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 10

In the Matter of:

Amazon.com Services, LLC, Case No. 10-RC-269250

Employer,

and

Retail, Wholesale and
Department Store Union,

Petitioner.

Place: Atlanta, Georgia (Via Zoom Videoconference)

Dates: May 7, 2021

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
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AMAZON.COM SERVICES, LLC,

Employer,

and

RETAIL, WHOLESALE AND
DEPARTMENT STORE UNION,

Petitioner.

Case No. 10-RC-269250

The above-entitled matter came on for hearing, via Zoom videoconference, pursuant to notice, before **KERSTIN MEYERS**, Hearing Officer, at the National Labor Relations Board, Region 10, Peachtree Summit Federal Building, 401 W. Peachtree Street, NE, 401 W. Peachtree Street, NE, Suite 2201, Atlanta, Georgia 30308, on **Friday, May 7, 2021, 10:06 a.m.**



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A P P E A R A N C E S

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E X H I B I T S

EXHIBIT

IDENTIFIED

IN EVIDENCE

Board:

B-1 (a) - 1 (1)

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P R O C E E D I N G S

HEARING OFFICER MEYERS: Excellent. The hearing will be in order. The -- the hearing before the National Labor Relations Board in the matter of Amazon.com Services LLC, case number 10-RC-269250, pursuant to an order signed by the Acting Regional Director dated April 26, 2021.

The hearing officer conducting this hearing is Kerstin Meyers. The official reporter makes the only official transcript of these proceedings. And all citations, and brief and arguments must refer to the official record. In the event that any of the parties wishes to make an off the record remark, request to make such remark should be directed to me, and not to the official report.

Statements of reasons in support of motions and objections should be specific and concise. Exceptions automatically follow all adverse rulings. Objections and exceptions may, on appropriate request, be permitted to an entire line of questioning.

I now propose to receive the formal papers. They've been marked for identification as Board's Exhibits 1(a) through 1(l). They are currently housed on the SharePoint page to which all of the party participants have been given access.

1(l) is the index and description of the entire exhibits. Are there any objections to the receipt of the exhibits into this record? For the petitioner, Mr. Davies, are there any

1 objections?

2 MR. DAVIES: No objections.

3 HEARING OFFICER MEYERS: And for the Employer, Mr.
4 Johnson, any objections?

5 MR. JOHNSON: No objections.

6 HEARING OFFICER MEYERS: All right, I will receive into
7 evidence the Peti -- or the Board's Exhibits 1(a) through 1(l).

8 **(Board Exhibit Numbers 1(a) - 1(l) Received into Evidence)**

9 HEARING OFFICER MEYERS: It appears from the Regional
10 Director's order dated April 26, that this hearing is held for
11 the purposes of taking evidence concerning Petitioner's
12 objections 1 through 16, 18, 19, part of objection 20, and
13 objection 22 and 23.

14 These are objections to the election conducted on February
15 28th, and concluded with a tally of ballots prepared on April
16 9th, 2021. The parties have been advised that the will
17 continue from day-to-day, as necessary, until completed
18 unless -- unless concluded that extraordinary circumstances
19 warrant otherwise.

20 Any party desiring to submit a brief to the hearing
21 officer shall be entitled to do so within five days after close
22 of the hearing. Prior to the close of the hearing, and for
23 good cause, the hearing officer may grant an extension of time
24 to file a brief, not to exceed an additional ten business days.

25 Any party shall be entitled, upon request, for a



1 reasonable period at the close of the hearing, for oral
2 argument. In due course, I will prepare and file with the
3 Regional Director my report, without any questions of
4 credibility, and containing findings of fact and
5 recommendations as to the disposition of issues, and will cause
6 a copy thereof to be served and both -- on all parties.

7 The parties have a right to file exceptions to my report
8 with the Regional Director, and may request review of the
9 Regional Director's decision from the Board. The procedures to
10 be followed from that point forward are set forth in Section
11 102.69 of the Rules and Regulations. Will counsel, and other
12 representatives for the parties, please state their appearance
13 for the record?

14 HEARING OFFICER MEYERS: Harry, I'm going to turn it over
15 to you.

16 MR. JOHNSON: Thank you, Madam Hearing Officer, or can I
17 call you Kerstin for the duration of this hearing? I think
18 you're on mute. Or let me just say, I'm Harry Johnson, counsel
19 for the Employer. There are several other counsel for the
20 Employer who have made the notice of appearance on the hearing,
21 so they can identify themselves after I do.

22 MR. BRODERDORF: Thank you, Harry. Good morning, this is
23 David Broderdorf, counsel for the Employer.

24 MR. GUZMAN: Francisco Guzman, counsel for the Employer.

25 MR. ROSENTHAL: Geoff Rosenthal, counsel for the Employer.



1 HEARING OFFICER MEYERS: Anyone else? Anyone else, Mr.
2 Johnson?

3 MR. JOHNSON: There are no further counsel for the
4 Employer. There was party representatives only.

5 HEARING OFFICER MEYERS: All right. And Mr. Davies, I'm
6 going to turn it over to you to introduce -- to -- or to allow
7 to be introduced the attorneys for the Union, and the party
8 representatives.

9 MR. DAVIES: Yes. George Davies, counsel for the
10 Petitioner Union.

11 MR. ROUCO: Richard Rouco, counsel for Petitioner. I
12 think -- I think that's -- that's the all the council we have,
13 Kerstin.

14 HEARING OFFICER MEYERS: Okay. And do you have any
15 rep -- any party representatives?

16 MR. DAVIES: Yes, we do, there's several. I can identify
17 them.

18 HEARING OFFICER MEYERS: Why don't we have them identify
19 themselves, just so we can see their names, and possibly make
20 sure they're changed?

21 MR. DAVIES: Okay.

22 MR. OBERNAUER: Adam Obernauer with the Petitioner.

23 HEARING OFFICER MEYERS: Thank you, sir. Next.

24 MS. CONNOR: Chelsea Connor, also with the Petitioner.

25 HEARING OFFICER MEYERS: Next. Is that it?



1 MR. ROUCO: Yes, Kerstin, that -- I -- I think that's it.

2 HEARING OFFICER MEYERS: Okay. And -- and Harry, I'm
3 sorry about this -- and I may have to go back to a headset, but
4 my headphones blanked out for a minute there. Did we introduce
5 the Amazon party participants?

6 MR. JOHNSON: Not yet. We're -- we're getting up there.

7 HEARING OFFICER MEYERS: Okay.

8 MS. SOVA: Okay. Good -- good morning. Jennifer Sova,
9 in-house counsel for Amazon.

10 HEARING OFFICER MEYERS: Thank you, Ms. Sova. Any other
11 Amazon representatives here?

12 MR. JOHNSON: It looks like that's it.

13 HEARING OFFICER MEYERS: Excellent. And there is no
14 intervenors, so -- and for the Regional Director, we do not
15 have counsel, but we have a bailiff who will be participating.
16 Are there any other appearances?

17 Let the record reflow that -- rec -- let the record
18 reflect there were no other responses. The issues of the
19 hearing are contained in the notice of hearing. Would the
20 parties like the state their position, please?

21 For the Petitioner, Mr. Davies and Mr. Rouco?

22 MR. DAVIES: State our position?

23 HEARING OFFICER MEYERS: Yes, that's what my script says.
24 So I'm going to my script. You can take a position, or we
25 can -- you can reserve until opening statements if you're going

1 to make an opening statement.

2 MR. DAVIES: Well, I -- I think our position is stated in
3 our objections to the election.

4 HEARING OFFICER MEYERS: Okay. And Mr. Johnson, would you
5 care to take a position at this time?

6 MR. JOHNSON: Yes. Thank you, Madam Hearing Officer. Our
7 position is that the objections are invalid and should be
8 dismissed.

9 HEARING OFFICER MEYERS: The party filing an objection has
10 the burden of proof to establish the objectionable conduct
11 affected the results of the election. Generally, the party
12 seeking to exclude or disenfranchise an employer or employee
13 classification has the burden to prove -- to sustain the
14 challenge.

15 If the issue involves statutory -- I'm going to skip that
16 part. Next, we would go to the presentation of evidence.
17 Do -- do either of the parties have a motion to make with
18 regard to the presentation of evidence?

19 MR. JOHNSON: There were a number of housekeeping matters,
20 actually, that I wanted to discuss with -- with you, Madam
21 Hearing Officer, and counsel for the Petitioner. Although we
22 appreciated the Zoom hearing invitation with the instructions
23 and protocols, I had some questions about that.

24 HEARING OFFICER MEYERS: Okay. So this is the motion to
25 sequester. I mean, do you want to do a motion to sequester



1 first, so that we can ask the parties -- or ask any potential
2 witnesses to leave? That was kind of my point, thinking that
3 you may not want to discuss housekeeping matters, et cetera, in
4 front of witnesses.

5 MR. JOHNSON: I understand, Madam Hearing Officer, and
6 thank you. Yes, I would like to make a motion to sequester
7 both, in terms of Zoom sequestration and physical
8 sequestration.

9 HEARING OFFICER MEYERS: Excellent. I have granted a
10 request -- or are there any objections from the Petitioner?

11 MR. ROUCO: Well, Kerstin -- this is Richard. I think we
12 do have some party representatives that may be witnesses.
13 Presumably, the sequester rule doesn't apply to them.

14 HEARING OFFICER MEYERS: Well, you can designate one party
15 representative. Do you want to designate that party
16 representative now?

17 MR. ROUCO: Well, they're on the call, yes. So we're --
18 we're going to designate Adam Obernauer as the party
19 representative.

20 HEARING OFFICER MEYERS: Okay. And any other party
21 representatives will not fall under the designated party
22 representative.

23 MR. ROUCO: Correct.

24 HEARING OFFICER MEYERS: Okay. I granted a request -- or
25 aside from -- are there any other objections, Richard?

1 MR. ROUCO: No other objections.

2 HEARING OFFICER MEYERS: Hearing no other objections, I
3 will grant the request to sequester witness -- witnesses. This
4 means that all persons who are going to testify in this
5 proceeding with specific exception may only be present in the
6 hearing room when they are giving testimony.

7 In other words, you cannot be on the Zoom call and/or
8 discuss anything from the Zoom call with a witness or potential
9 witness. Each party may select one person to remain in the
10 room and assist in the presentation. The Petitioner has done
11 that. Mr. Johnson, who would you designate for the Employer?

12 MR. JOHNSON: I would designate Jennifer Sova.

13 HEARING OFFICER MEYERS: Thank you. Those two individuals
14 may remain in the hearing room, even if they are going to
15 testify, or have testified. The order also means that from
16 this point on, until the hearing is finally closed, no witness
17 may dis -- discuss with other potential witnesses either the
18 testimony that they have given, or that they intend to give.

19 The best way to avoid any problems is to simply not
20 discuss the case with any other potential witnesses until after
21 the hearing is completed. Under the rule, as applied by the
22 Board, with one exception, counsel for the party may not, in
23 any manner, including by showing of transcripts of testimony,
24 inform of witness about the content of the testimony given by
25 the preceding witnesses without express permission from the

1 hearing officer.

2 However, counsel for a party may inform counsel's own
3 witness of the content of testimony, and may show to a witness
4 transcripts of testimony given by a witness to the opposing
5 side in order to prepare for rebuttal of such testimony. I
6 expect counsel to police the sequestration order and to bring
7 any violation of it to my attention immediately.

8 Also, since this is a Zoom hearing, and obviously we don't
9 have all of the parties witnesses, as I put my instruction, it
10 is the obligation of counsel to make sure that their witnesses
11 are aware of the rule of sequestration and what it means. So
12 please make sure if you need us to cut and paste this portion
13 of the script that I am reading, I'll be happy to do that.

14 But please make sure your witnesses are aware and please
15 police the rule of sequestration. Also, it is the obligation
16 of counsel to inform potential witnesses of their obligation
17 under this order. It is also recommended that as witnesses
18 leave the witness stand upon completion of their testimony,
19 they be reminded that they are not to discuss their testimony
20 with any other witness until the hearing is completed. I will
21 generally do that. If I forget, then we will -- just remind
22 me. Now, let's turn to housekeeping matters.

23 Mr. Johnson, you said you had housekeeping matters,
24 what -- what are those matters?

25 MR. JOHNSON: Sure. We appreciated the Zoom hearing

1 invitation and instruction protocols. Of -- a lot of this has
2 to do with them, so I'll just click off my questions. I think
3 it might be appropriate to do a check at the beginning of every
4 trial day to make sure everybody has the exhibits, because we
5 are going to be using SharePoint; and that's one suggestion.

6 HEARING OFFICER MEYERS: I'm sorry -- okay. So in what
7 way -- I mean, it was my understanding that the parties
8 objected to my request to upload in advance of your witnesses,
9 and you wanted to -- to -- to upload immediately before your
10 witnesses. Have you -- have you capitulated, or did I
11 misunderstand?

12 MR. JOHNSON: No my -- okay. So my understanding is that
13 it was fine for parties to upload their exhibits, you know,
14 right before the witness went on. But of course, the outcome
15 of that might be that there will be some technical delay with
16 the exhibits hitting SharePoint and the other party being able
17 to, like -- to essentially and review them, look at them, print
18 them out, for example, if they needed to.

19 And I'm fine to have a discussion in terms of any sort of
20 reasonable -- if you want to say an hour before the trial day
21 starts, to load them, or just some understanding of how we're
22 going to do that, and to make sure that each party has the
23 exhibits before they pop up on the screen.

24 HEARING OFFICER MEYERS: Absolutely.

25 Mr. Davies, do you -- do you have any proposals? I would

1 like to see them in an hour before the hearing so we can be
2 sure that, you know -- that the anticipated witness' evidence
3 is uploaded and accessible. But if you have any comments,
4 please -- please share now.

5 MR. DAVIES: No, that -- if -- if that's what you would
6 prefer, then we'll comply with that directive.

7 HEARING OFFICER MEYERS: Okay. So that will apply to both
8 parties. That means that, you know, if we're going on the
9 record at 10:00 Central Time, by 9:00 a.m., or the night
10 before, I'm going to ask you to upload the evidence for all of
11 your potential witnesses. Obviously, there may be some
12 witnesses that are placed on the stand, or call in out of
13 order, in which case we will -- we will adapt. Anything else,
14 Mr. Johnson?

15 MR. JOHNSON: There is one related piece to that because
16 those --

17 HEARING OFFICER MEYERS: Okay.

18 MR. JOHNSON: -- (indiscernible, simultaneous speech)
19 would be cross-examining, and they might have cross-examination
20 witnesses. How would you like that handled? My suggestion is,
21 after the witness is done on direct, you take 20 minutes, or
22 so, to upload the cross-examination exhibits, if any. And so
23 the -- the attorney on direct will have a chance to review
24 them.

25 HEARING OFFICER MEYERS: Okay. So there would be --



1 (Indiscernible, simultaneous speech) --

2 MR. JOHNSON: And you would.

3 HEARING OFFICER MEYERS: Well, Mr. Johnson,
4 here's -- here -- here's my -- my thoughts on that. Okay. So
5 I assume that you are going to know, for the most part, who the
6 witnesses are, and that your team will have identified what
7 documents you will potentially be using on cross-examination,
8 and you will probably have those already just about ready to
9 upload.

10 You have a very large team of attorneys working on this,
11 as well as staff. It doesn't need to be the lead attorney who
12 is asking questions to upload this to SharePoint. So I don't
13 know that I will agree that we're going to take 20 minutes
14 after every witness to upload documents. I would ask that once
15 identified, your team of -- of experts works towards getting
16 those uploaded as the testimony progresses.

17 MR. JOHNSON: I understand, Madam Hearing Officer. Is it
18 possible to have at least a little bit of indulgence, because
19 depending on what is that at the very end of the direct
20 examination, we may not be able to get a document in, you know,
21 ten seconds, or ten minutes for that mat -- for that matter?

22 MR. ROUCO: It --

23 HEARING OFFICER MEYERS: Richard, you unmuted, so I'm
24 assuming you have something to say?

25 MR. ROUCO: Yeah. No, I -- I -- I -- I actually -- I



1 agree with Mr. Johnson's proposal here, that -- that when it
2 comes to cross-examination, exhibits that are going to be used
3 during cross-examination -- that after every direct witness --
4 I mean, typically there's some time -- there's a break given,
5 right, to do -- to think through and figure out what your cross
6 X is going to be.

7 And during that time period, exhibits can be uploaded with
8 respect to that witness. Because I -- I -- I don't -- I don't
9 think they'll know exactly who our witnesses are going to be
10 and in what order we're going to put them on.

11 HEARING OFFICER MEYERS: I understand, but I'm -- but I'm
12 not going to grant an additional 20 minutes to upload
13 documents, which is what I understood the request to be. If
14 you're asking -- if -- if the parties are asking if they'll
15 have an opportunity to prepare their cross, of course they
16 will. And if you can get it uploaded during that time,
17 that's -- that's perfect. But I'm not going to grant an
18 additional 20 minutes after every witness for -- simply for the
19 upload of documents.

20 MR. ROUCO: Got it.

21 MR. JOHNSON: Okay. For the record, I actually agree with
22 Richard's proposal, because it will be -- I mean, some of the
23 cross-examination exhibits we could predict; some of them are
24 going to be a little bit harder to predict. So I just beg your
25 indulgence during hearing for those.

1 HEARING OFFICER MEYERS: Well, we will -- on a
2 case-by-case basis, we will discuss the need for additional
3 time to upload documents. But I would anticipate the -- the
4 legal teams of both parties can -- can be working in the
5 background. Any other housekeeping matters, Mr. Johnson?

6 MR. JOHNSON: Yes. So my understanding is that the first
7 round of witnesses are going to be identified. Is it going to
8 be the -- if they're going on Monday, the Friday, or is it
9 going to be Sunday?

10 HEARING OFFICER MEYERS: They'll be -- oh, I didn't really
11 identify whether I mean business day. I would prefer business
12 day; that way if I'm out of town, or otherwise engaged, I don't
13 have to remember to check. But I don't know that we're going
14 to be identifying parties for the opposing counsel.

15 Obviously, if they have to -- if somebody has to be off
16 work, they're going to need sufficient time that the Employer
17 can cover for them. But if -- if there are witnesses that are
18 not being relieved of duty to testify, then I don't know that
19 I'm going to have the Union or the Employer, notify the
20 opposing counsel the day before.

21 That is solely so that we can make sure that they have an
22 invite; although, it is the party's responsibility to send
23 them -- to forward the Zoom invite. But if -- I've asked the
24 witnesses to go through a pre-appearance set of steps to ensure
25 that they can get on. And so I would like them to do it in

1 advance in case there's some issue, so they can contact us.

2 Does that make sense, Mr. Johnson?

3 MR. JOHNSON: Two things. So first, we -- we don't really
4 need any time outside of the normal course of just asking
5 witnesses to call in, so that's not going to be an -- an issue,
6 just to give some notification because of the size of the
7 facility.

8 For example, I -- I think I'm a little confused because I
9 had understood somewhere in the trial planning that there would
10 be -- that the party intending to put on witnesses would inform
11 the other party, you know, the day before by, I think, noon.
12 And I'm trying to find the exact quote for that here.

13 But one issue is going to be, it's going to be very
14 difficult to do this sort of cross-examination exhibit
15 analysis, and then get things ready or preloaded into
16 SharePoint if we have no idea. I think it's --

17 HEARING OFFICER MEYERS: Okay.

18 MR. JOHNSON: -- IV(1), little Roman numeral (ii), sub
19 (1), of the order.

20 HEARING OFFICER MEYERS: -- yeah. That -- I -- I borrowed
21 that from -- from other sources, and kind of -- it was a
22 conglomerate of -- so hold on. Let me find the final one I
23 sent you all. Okay. I thought I had saved to my --

24 MR. JOHNSON: It's under participant's, would be page 3.

25 HEARING OFFICER MEYERS: -- yeah. It's just a matter of

1 finding the actual document on my endless -- numeral 26, no.
2 Oh, I know why it's not showing up. I'm in the wrong -- and I
3 think I saved everything, except for this, to an easily defined
4 location, so bear with me. While I'm looking for it, does the
5 Petitioner have any position on whether or not we can identify
6 witnesses the business day preceding their testimony?

7 MR. ROUCO: Yes. I mean, I thought we were -- my
8 recollection of our meeting was that we would not be
9 identifying witnesses in advance; that we would proceed the way
10 most objections hearings proceed, and that is that witnesses
11 are identified as they're called to testify.

12 MR. JOHNSON: All right. Well, our position is that it
13 would -- whether or not we went to apply exactly what's
14 IV(ii)(1), which says "The party's attorneys will submit a
15 written list of witnesses they anticipate calling the following
16 day to give either -- the other party notice." We do think
17 that some standard notice should be applied.

18 And if there isn't any standard of notice that's to be
19 applied, then you just have to expect a cross-examination there
20 is going to be some delay, and there is going to be
21 essentially -- there will be fewer documents that will be able
22 to be preidentified and uploaded. And in -- I would also like
23 to point in IV sub(ii)(1), there are -- there's an exception
24 here party's not be precluded from calling a witness who's not
25 on the witness list if they determine that person is necessary.

1 So I would assume in good faith, you know, that exception
2 wouldn't be abused, but it is an exception in case someone
3 feels that they need to call a witness out of order. There are
4 a lot of ex -- objections in this case, it's going to be a long
5 record case. The -- probably going to be a lot of witnesses,
6 so it will help with moving the proceeding along.

7 MS. CONNOR: Kerstin, I emailed that document to you, if
8 that's a faster way to find it.

9 HEARING OFFICER MEYERS: Thank you. I -- there is
10 something gong -- I've got some weird things showing up on my
11 computer, so I can't really open anything; so bear with me.
12 Okay. Okay. This is not -- this technical glitch is -- is
13 disturbing. I have -- my cursor's stuck. Wait. Hold on. It
14 just did something. I don't know what it did.

15 THE COURT REPORTER: I think you also lost video
16 because --

17 HEARING OFFICER MEYERS: Have I lost my video?

18 THE COURT REPORTER: I don't see you. I see your name,
19 but I don't see you at all.

20 HEARING OFFICER MEYERS: You said -- is that --

21 MR. ROUCO: Yeah. I -- I think you've lost your video.

22 MR. JOHNSON: You appear to be frozen to me.

23 HEARING OFFICER MEYERS: Okay. I am going to log out and
24 log back on. Please bear with me, since I don't know any other
25 way to fix this.

1 THE COURT REPORTER: I'm going to go off the record while
2 you do that.

3 HEARING OFFICER MEYERS: Thank -- thank you.

4 (Off the record at 10:33 a.m.)

5 HEARING OFFICER MEYERS: Okay. After a -- a unintended
6 hiatus due to a computer glitch, we're back. And I
7 have -- we've had an off-the-record discussion, and I'm going
8 to allow counsel for the Respondent -- or counsel for the
9 Employer to take a position.

10 But based on the pre-hearing instructions I sent out
11 regarding witnesses, which is at page 4 of the instructions,
12 which I did not number. My apologies. Under subsection IV,
13 "Participants", and under (i), subset (ii), "Witnesses",
14 wherein I stated that the list of participant -- or list of
15 potential witnesses must be submitted by noon, the day
16 preceding the -- them being called as a witness.

17 I did not specify that the -- it was my understanding from
18 our pre-hearing discussions, that the parties understood that
19 this list could be submitted only to the hearing officer and to
20 the bailiff, as the Petitioner had reservations. And I'll also
21 allow the Petitioner to state what its reservations were on the
22 record. But with that being said, I believe the Employer
23 objects -- objects to us proceeding in that manner.

24 And Mr. Johnson, would you like to take position on the
25 record and explain what your objection is?

1 MR. JOHNSON: Thank you, Madam Hearing Officer. Just very
2 quickly -- and I -- I won't belabor this. I think it's --it's
3 two-pronged. The first prong is a due process issue. Because
4 as you all know, everyone on this Zoo -- at this Zoom hearing
5 knows, this is an extraordinarily long time of a -- and we
6 count the critical period and the time of the campaign, there
7 are extraordinary amount of employees in this unit. There are
8 extraordinary amount of objections.

9 And if you put all that together from the point of view of
10 due process, perhaps, the -- either party, because this will
11 apply to both parties, that is in the cross-examining position,
12 it will -- I think, the fundamentals of their fairness to
13 prepare for the next day, to find out some advance notice of
14 who the witnesses are going to be.

15 Now, certainly, I can represent for my client we wouldn't
16 be interested in finding out the email address and telephone
17 number as is specified on there. But the identity of the
18 witness and what objections they would address is going to
19 make -- it is actually, you know, some fundamental notice that
20 we think should be given, given the circumstances in this case.

21 The other piece of this is, of course, it's just a matter
22 of moving the hearing along and have this move the order for
23 the hearing. Of course, if an -- an individual pops up in the
24 first notice the cross-examining party has is when they pop up
25 for that day, I -- I think the anticipation that

1 cross-examination, selection of exhibits, and whatnot to go in
2 SharePoint, get printed out to review, which I do think
3 Petitioner's counsel previously, you know, considered that a
4 valid point, is going to be even -- even more difficult because
5 it's going to be a -- a -- sort of trial by ambush surprise.

6 And then the cross-examining party has to get together its
7 materials, and we're not getting a -- even a flat 20 minutes
8 for that, is my understanding of the hearing officer's ruling
9 on that. So we do accept, and -- and that's what our position
10 is.

11 HEARING OFFICER MEYERS: Okay. Just for clarification,
12 the hearing -- or the hearing officer has not ruled that you
13 will get a flat 20 minutes. I said I would consider each
14 witness on a case-by-case basis, as some witnesses may testify
15 to numerous objections, and some may have only discrete
16 testimony as to one -- one occasion or one occurrence.

17 So I'm not making a ruling as to every witness. But it is
18 also my job to ensure that these proceedings proceed at a
19 regular pace. So I -- I'm not going to say that, you know,
20 after each witness, the opposing party will have X amount of
21 time to prepare for cross-examination, which will include
22 uploading the documents.

23 That said, while I will be considering this on a
24 case-by-case basis, I do anticipate that the parties can help
25 move this hearing along. And in general, in a Board hearing,

1 including a postelection hearing, we don't generally
2 give -- there is no witness list requirement as there would be
3 in civil litigation in the federal courts.

4 So, Mr. Johnson, do you have any arguments based on Board
5 case law and/or the case handling manual, operations manuals,
6 anything to support your assertion that you're entitled to a
7 witness list?

8 MR. JOHNSON: We'll submit that with any briefing we do on
9 this matter.

10 HEARING OFFICER MEYERS: Excellent. And would the
11 Petitioner care to take a position on the request for a witness
12 list?

13 MR. ROUCO: Yes, it's -- it's the Petitioner's position
14 that witness lists are not called for. I think the Board has
15 wisely not adopted that policy, precisely, because protecting
16 and guarding the identity of witnesses -- employee witnesses in
17 particular, until the moment that they are prepared to testify
18 is something that's very important.

19 And the reason we don't do this is because what
20 Mr. -- what the company's proposing here is, is that -- say,
21 for example, we have five or six witnesses planned for Monday.
22 They would want notice of 24-hours, like, at noon the prior
23 day, of all these employee witnesses that we intend to call.

24 And the reality is, is that we're not sure that we -- that
25 we plan on calling them. Some of these witnesses, for a

1 variety of circumstances, may not be able to testify on that
2 day, or may decide they -- they don't want to testify, and in
3 which case their identity is unnecessarily disclosed. And
4 that's why we oppose having to give a witness list in advance.

5 HEARING OFFICER MEYERS: Excellent. And I think, Mr.
6 Johnson, you've already -- I've already ruled I'm going to deny
7 your request for a witness list, with the anticipation that you
8 can brief that. We're going to have --

9 MR. JOHNSON: (Indiscernible, simultaneous speech) --
10 just --

11 HEARING OFFICER MEYERS: Oh. You may --

12 MR. JOHNSON: -- just one last -- no, I --

13 HEARING OFFICER MEYERS: -- Mr. Johnson.

14 MR. JOHNSON: -- one -- thank you, Madam Hearing Officer.
15 One point clarification. I didn't intend to say that we had
16 understood that you made a ruling that there was a 20-minute
17 break for cross-examination. We did understand the ruling on
18 that.

19 HEARING OFFICER MEYERS: Okay.

20 MR. JOHNSON: It's -- I -- I think the other piece is,
21 certainly, we could have a version of this order if someone
22 definitely knew they were going to testify, then that could be
23 a 12 noon. If they had any doubts about it, and I would just
24 rely on Petitioner's good faith, and Petitioner counsel's good
25 faith, they wouldn't have to be on a witness list. That's all

1 I want --

2 HEARING OFFICER MEYERS: Mr. -- Mr. Rouco, do you -- do
3 you have a response? Or actually, in the interest of saving
4 time --

5 MR. ROUCO: Exactly.

6 HEARING OFFICER MEYERS: -- I'm going just -- I'm going
7 to -- instead of going back and forth, I'm going to deny your
8 request for witness list, as I previously did, with the
9 anticipation that you can brief this and make any citations to
10 Board authority in your brief. Next, any further housekeeping
11 matters, Mr. Johnson?

12 MR. JOHNSON: Just a -- a few more things. So I
13 understand from the hearing officer's instructions that it's up
14 to the examining party whether they want to have the exhibits
15 on the screen or not; is that correct?

16 HEARING OFFICER MEYERS: Correct.

17 MR. JOHNSON: Okay. And --

18 HEARING OFFICER MEYERS: But you will have to ensure that
19 the witness has access to the documents. And make sure they're
20 in SharePoint for the parties, and for the hearing officer, and
21 for the Court reporter. But you -- you don't have to display
22 them on the screen, because I think that takes up more
23 bandwidth.

24 MR. JOHNSON: Correct. And -- and that's why I asked.
25 And -- and then just a clarification. So is it that the

1 exhibits for the direct examining party go in at some, you
2 know, time certain the night before? Or are we going to have
3 the one-hour before rule? Or what rule is it going to be?

4 HEARING OFFICER MEYERS: If I say that the -- you know,
5 the exhibits must be in, it might identify witnesses if they
6 were to put them in the night before. And if they're reluctant
7 to identify witnesses, they may not want to put in evidence in
8 advance.

9 I would suggest that the parties endeavor to upload the
10 documents at least one hour before they anticipate calling a
11 witness, just so if there's any glitches they can be resolved
12 in that time, and you don't identify the witness. However, if
13 there's no -- if there's no concerns about identifying the
14 witness, please ensure that they are uploaded in advance. I --
15 I'm not going to set a time, but I would suggest as long as
16 possible before the before the -- before the witness is called.

17 MR. JOHNSON: All right. I --

18 HEARING OFFICER MEYERS: Does that make sense?

19 MR. JOHNSON: -- so I understand that the guideline is a
20 minimum of one hour, and then as soon as possible, according to
21 the party's calculation of the -- the witness?

22 HEARING OFFICER MEYERS: Correct.

23 MR. JOHNSON: Okay. Thank you, Madam Hearing Officer.
24 Another point -- and I think I -- we have agreement on this
25 with Petitioner. I think it's just going to be the direct

1 examining attorney can be in the room with the witness, in
2 their own room without anybody else as this is proceeding.
3 Nobody else in the room, and you know, possibly panning around
4 the room with the camera.

5 And the witness just has the exhibits, and no other
6 documents. And like your instruction says, they're not in the
7 position to be texting or receiving communications from outside
8 the proceeding. Do I have that right, gentlemen?

9 MR. DAVIES: Yeah. That -- that is -- that is correct,
10 that we would be -- if we're in the same room as the witness,
11 as Mr. Johnson said, just the attorney and the witness on the
12 screens -- on the same screen. No other documents other than
13 the exhibits that might be used during the examination.

14 We don't anticipate that happening. It may, just
15 depending on the technology issues that -- that could arise.
16 But -- but yes, we -- we did agree to that.

17 HEARING OFFICER MEYERS: I would -- I would ask the -- the
18 parties, if -- if the parties are setting up the video for
19 their witnesses, I would ask that you -- I believe the
20 instructions included suggestions that the camera be placed far
21 enough away that we can observe the witness, like, to -- from
22 the waist up, so that we can tell whether or not they have
23 other documents, and what they're doing, and whether they're
24 receiving text.

25 It's more difficult if we have witnesses that are

1 appearing by phone, but we will adapt as necessary. But
2 please, if you are in the room, if you would just set up the
3 camera so that we can see the witness and confirm that they
4 aren't doing anything other than testifying and reviewing the
5 documents that are exhibits as they come in. Any other
6 preliminary matters, Harry --

7 MR. JOHNSON: I'm down to --

8 HEARING OFFICER MEYERS: -- Mr. Johnson?

9 MR. JOHNSON: -- just three. You'll be excited to know --
10 you can call me Harry. Okay. So as alluded to in our
11 discussion last week, we're going to be handling the -- the
12 Amazon counsel team consisting of Mr. Broderdorf and I,
13 for -- at this point, are going to be handling these objection
14 by objections.

15 So you might have two examining attorneys for the same
16 witness, but we will promise to divide up by objection. I did
17 want to put that on the record so you all would know. The
18 second thing is, we would just have a standing request, if
19 there are any Jencks statements, that they get uploaded after
20 the witness testifies, so I don't have to keep making that
21 request again and again, if there are any applicable ones out
22 there.

23 HEARING OFFICER MEYERS: Harry, let me -- let me address
24 that. Well, I don't think that -- I don't think there's any
25 basis for a continuing request. It won't be necessary.

1 It's -- if the bailiff will confirm, I was not provided with
2 ant sealed envelope of statements. So I don't believe there
3 are any Jencks statements applicable herein.

4 Bailiff, could you confirm that?

5 THE BAILIFF: Yes, I can confirm that.

6 HEARING OFFICER MEYERS: Thank you. So thank -- thank
7 you, Mr. Johnson, for the -- for the motion, but it's
8 unnecessary. There are no Jencks statements in this matter.

9 MR. JOHNSON: All right. Thank you for confirming on
10 that. And then the last thing is just to put it in on the
11 front end of this case. Given the fact that it's going to be a
12 long record case, and there are going to be a lot of witnesses,
13 that I predict we'll -- both sides will offer, we would ask for
14 ten days for the brief right now, just to -- so the hearing
15 officer understands.

16 HEARING OFFICER MEYERS: Thank you. I will take into
17 consideration your motion for an additional ten days to file
18 your briefs at the close of this hearing. The parties should
19 note that it is your responsibility to request an expedited
20 transcript. If you do not request an expedited transcript, any
21 request for an extension of time based thereon will be denied.
22 I somehow missed that in my preliminary script, but I know it's
23 in there somewhere.

24 Any other preliminary matters from the Employer, Mr.
25 Johnson?

1 MR. JOHNSON: This isn't housekeeping, really, but we were
2 going to move to add the decision and direction of election,
3 and the voter kit, and the election notice to be added to the
4 formal Board Exhibit 1. So it -- those would come in as 1(m),
5 1(n), and 1(o), (indiscernible, simultaneous speech).

6 HEARING OFFICER MEYERS: Could you -- could you tell us
7 why you would request that those be included? What is the
8 purpose of the inclusion of those documents?

9 MR. JOHNSON: Right. Well, I -- I -- there's obviously in
10 play objections about what the decision and direction of
11 election said. And so that's one thing. There's -- obviously,
12 the election notice was something that employees saw, so that's
13 going to be relevant in terms of deciding these objections.
14 And the same thing with the voter kit.

15 HEARING OFFICER MEYERS: Can you cite to any Board law,
16 or -- or case handling manual provisions that would provide for
17 the inclusion of these additional documents in the formal
18 papers?

19 MR. JOHNSON: Well, a request for a judicial notice --
20 we'll -- we'll make that, and ask if those can be put in as a
21 joint exhibit, if the -- if the hearing officer is reluctant to
22 put -- add it to -- to formal papers here. But obviously,
23 these are -- this is all one case. And these were papers that
24 came out as a result of that case, and we think they should be
25 in.

1 HEARING OFFICER MEYERS: And I can understand why
2 you -- why you might need them. There's already things that I
3 can say -- hold on. I've -- I've got my -- my -- my script
4 here. There are reasons I would -- I would think that you
5 would want me to take judicial notice -- or administrative
6 notice of those documents. However, the case handling manual
7 is clear.

8 And I had the citation to it somewhere in my script, but
9 when I closed the -- when I -- when I had a hard -- closed my
10 hard drive, I think I deleted it. But the case handling manual
11 is clear as to what should be included. And that -- those
12 items are not among the included documents. So the parties can
13 either jointly seek to admit those or -- will there be any
14 objection to a -- to a joint exhibit from the Union?

15 MR. DAVIES: We just need to consider that. We haven't
16 thought about that yet. But we can certainly consider that and
17 talk with Mr. Johnson off the record about that.

18 HEARING OFFICER MEYERS: Okay. And otherwise, the
19 Employer can move for the admission, and I will happily receive
20 those. Any other housekeeping or procedural matters before we
21 move on to the motions that have been filed?

22 MR. JOHNSON: One last question. And it may end up being
23 fairly important. And trial examiners, and judges, and -- and
24 the like, all interpret this differently. In Exhibit B and
25 Exhibit C, there's an instruction about witnesses' testimony.

1 And this is separate and apart from the sequestration order,
2 but I think it is related.

3 And I'll -- I'll just direct your attention to Exhibit B,
4 Roman numeral V(iii). And it says in there, "While testifying,
5 witnesses may not communicate with anyone else about their
6 testimony, including during breaks, and may not review any
7 documents, devices, or other items unless asked to do so by the
8 hearing officer, or by an attorney, as part of a questioning
9 during testimony."

10 I think you spoke on the record other -- there exception
11 other than, you know, informing someone of an opposing witness'
12 testimony for the purposes of rebuttal. But my specific
13 question is, the way that I read this, it -- you know, anyone
14 means anyone. So the direct examining attorney, once the
15 witness starts testifying, can't communicate to that witness
16 about their testimony, including during breaks. And -- and
17 that's it. Is that what you meant by that instruction?

18 HEARING OFFICER MEYERS: Absent permission from the
19 hearing officer, you are restricted -- restricted from having
20 an off-the-record discussion with -- with your witness. Now,
21 you can ask for permission; and depending on the circumstances
22 and the explanation, I may or may not grant permission.
23 However, in general, I don't want attorneys having
24 off-the-record discussions with their witness in the middle of
25 their testimony.

1 MR. JOHNSON: I understood -- stand. Thank you. That's
2 it for me.

3 HEARING OFFICER MEYERS: All right. Any other
4 housekeeping matters? Hearing none, we will move on to the
5 motions. There is -- shall we deal with the Employer's
6 petition to revoke first, or should we deal with the Union's
7 petition to revoke?

8 MR. JOHNSON: Well, probably, the Employer because it's
9 criminological.

10 MR. ROUCO: I -- I -- Kerstin, and this is Richard.
11 I -- I -- I assume that this portion of it is off-the-record,
12 right? That it's not the -- the issues on motions --

13 HEARING OFFICER MEYERS: You're right. We don't --

14 MR. ROUCO: -- (indiscernible, simultaneous speech) --

15 HEARING OFFICER MEYERS: -- need to make this -- yeah.
16 This is not necessarily part of the record. Can we go off the
17 record, court reporter? Thank you, Richard -- or Mr. Rouco.
18 (Off the record at 11:11 a.m.)

19 HEARING OFFICER MEYERS: All right. We are on the record.
20 The parties, in an off-the-record discussion, have begun to
21 resolve many of the outstanding subpoena issues, and have
22 requested more time to finalize the resolution of those
23 subpoena issues to the extent possible. With that in mind, we
24 are going to adjourn the hearing at this time. We will
25 reconvene at 9:00 a.m. Central stand -- or daylight time on

1 Monday, May 10th, at -- 2021. And with that, I will bid
2 everyone adieu. And we will adjourn the hearing for the
3 afternoon.

4 UNIDENTIFIED SPEAKER: Are we going --

5 HEARING OFFICER MEYERS: Thank you.

6 UNIDENTIFIED SPEAKER: -- all week next week?

7 HEARING OFFICER MEYERS: I'm -- I'm sorry?

8 UNIDENTIFIED SPEAKER: Are we going all week next week,
9 that's --

10 HEARING OFFICER MEYERS: Yes, that's the anticipation.
11 We -- we will go all week next week. And we will probably go
12 through up until Wednesday of the following week.

13 UNIDENTIFIED SPEAKER: Okay. Thank you.

14 HEARING OFFICER MEYERS: All right.

15 MR. DAVIES: Thank you.

16 HEARING OFFICER MEYERS: Thank you, Mr. Moxie. And I will
17 see everybody Monday morning.

18 MR. JOHNSON: Thank you. Have a good weekend.

19 HEARING OFFICER MEYERS: Thank you. I appreciate it.
20 Bye-bye.

21 MR. JOHNSON: Happy Mother's Day. Bye.

22 **(Whereupon, the hearing in the above-entitled matter was closed**
23 **at 12:25 p.m.)**

24

25

C E R T I F I C A T I O N

This is to certify that the attached proceedings, via Zoom videoconference, before the National Labor Relations Board (NLRB), Region 10, Case Number 10-RC-269250, Amazon.com Services, LLC and Retail, Wholesale and Department Store Union, held at the National Labor Relations Board, Region 10, Peachtree Summit Federal Building, 401 W. Peachtree Street, NE, 401 W. Peachtree Street, NE, Suite 2201, Atlanta, Georgia 30308, on May 7, 2021, at 10:06 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



BARRINGTON MOXIE

Official Reporter